Supreme Court, U.S.
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NO. 92-1487

THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

CLEO ALLEN BUTLER ET AL.
PETITIONERS

VERSUS

JEROME T. MEDLEY, ET AL.
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

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EDITOR'S NOTE

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QUESTIONS PRESENTED FOR REVIEW

I. Whether this Honorable Court should exercise its jurisdiction in this matter.

II. Whether La. R.S. §40:1299.42(B), which limits recovery in medical malpractice actions to $500,000 exclusive of medical costs, violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution

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STATEMENT OF THE CASE IN ADDITION TO THAT CONTAINED IN THE PETITION FOR WRIT OF CERTIORARI

The Respondent wishes to point out to this Court that in support of their Motion for Summary Judgment, Respondents, Dr. Medley, Dr. McKenna, and Dr. Braud, as the proponents of the statutory limitation, introduced into the trial court record the entire record of the evidentiary hearing on the constitutionality of the instant statute in the case of Williams v. Kushner, (Civil District Court for the Parish of Orleans, No. 83-1115). This record contains the evidentiary showing made by the Louisiana Commissioner of Insurance, the Louisiana State Medical Society, and the Louisiana Medical Mutual Insurance Company as to the factual events leading up to the passage of the Louisiana Medical Malpractice Act in 1975, the purpose and rationale of the Legislature in passing the Act, and the actual effect that the Louisiana Medical Malpractice Act has had regarding the continuation of health care services for Louisiana citizens at a reasonable cost. This record consists of over 3,000 pages of testimony and voluminous documentary evidence. Based on this evidence, the trial court made factual findings relevant to its ruling that the instant statute is constitutional, and these factual findings were upheld by the Court of Appeal. Williams v. Kushner, 524 So.2d 191, 195 (La. App. 4 Cir. 1988), amended and aff'd, 549 So.2d 294 (La. 1989).

SUMMARY OF ARGUMENT

The Louisiana Patient's Compensation Fund submits that this Honorable Court should not exercise its jurisdiction in this matter. The principal legal argument presented to this Court by the Petitioner, that the Americans With Disabilities Act has created a substantial federal question in this case, was first presented to a court below through an Application for Rehearing on the issue of constitutionality to the Louisiana Supreme Court. The Louisiana Supreme Court as a general rule does not grant rehearings to consider issues raised for the first time, and it denied the Petitioners' Application for Rehearing. The Fund submits that the Petitioners' failure to comply with the state Supreme Court's procedural rule, forbidding raising new issues in an application for rehearing, should now bar this Court from exercising its jurisdiction to review the "federal question" created by the Americans With Disabilities Act. Comity to the states and the necessity of a properly developed record on appeal are among the considerations weighing against the exercise of this Court's jurisdiction.

In any event, this Honorable Court should not exercise its jurisdiction in this matter because the instant question of the constitutionality of a limitation of recovery in tort by victims of medical malpractice is not a substantial federal question. Such was the statement of this Court in 1985 in dismissing an appeal seeking the review of a decision by the California Supreme Court on this issue. Nor does the Petitioners' invocation of the Americans With Disabilities Act inject a federal question into this litigation. The Petitioners have argued that because the Americans With Disabilities Act contains a finding that "individuals with disabilities are a discrete and insular minority," the Act has obligated this Court to consider disabled Americans to constitute a suspect class for the purposes of federal equal protection analysis. The Fund submits that through the Americans With Disabilities Act, the Congress sought to end

discrimination in the areas of employment, public services, and public accommodations and services operated by private entities. The clear language of the Act demonstrates that the Congress did not intend to prohibit states from amending their own tort laws to limit the liability of certain groups. The congressional finding, to the effect that disabled persons constitute a discrete and insular minority, was simply not an attempt by Congress to subject every state law affecting disabled persons to heightened scrutiny under equal protection analysis. In any event, the Congress is not empowered under §5 of the Fourteenth Amendment, as argued by the Petitioners, to mandate that a particular classification is suspect and thus unconstitutional. Instead the Congress has the discretion to enact positive law to enforce the prohibitions of the Fourteenth Amendment. In short, §5 does not transfer the judicial power to the Congress, but it instead increases the legislative power of the Congress. Thus, the Petitioners' invocation of the Americans With Disabilities Act, as changing this Court's equal protection analysis of the instant statutory limitation and thereby creating a federal question, is ill-founded and must be rejected.

Finally, the Fund submits that the instant statutory limitation of liability is fully in conformity with the dictates of the Equal Protection Clause of the Fourteenth Amendment, because this law is based in reason and neither abridges a fundamental constitutional right nor creates a suspect or quasi-suspect classification. First, this Court has ruled that a state's interest in maintaining its own rules of tort is paramount to any discernable federal interest, except perhaps an interest in protecting the individual from state action that is wholly arbitrary or irrational. A fair inference of this ruling is that the right to recover in tort is not a fundamental right under the United States Constitution. Therefore, any legislative enactment affecting that right need only have a rational basis.

Second, the instant statute does not create a suspect or quasi-suspect classification. Even if this Honorable Court were to rule that the instant statute classifies on the basis of physical disability, this Court has already ruled that physically disabled persons do not constitute a suspect or quasi-suspect class. Furthermore, individuals disabled as a result of medical malpractice do not constitute a politically powerless minority entitled to heightened protection under the federal Equal Protection Clause. Their right to recovery in tort is vigilantly protected during the political process that regulates it by the plaintiffs' bar which has a strong interest in protecting statutory rights to recovery in tort. Because the instant statute does not implicate a suspect or quasi-suspect class, it need only have a rational basis which it clearly does.

Finally, various federal courts of appeal have ruled that statutory limitations of liability in medical malpractice actions similar to the one here at issue are fully constitutional vis-a-vis the equal protection guarantees of the Fourteenth Amendment. At the basis of these rulings is the recognition that such statutes clearly have a rational basis and that they affect neither fundamental rights nor create suspect classifications.

The Louisiana Patient's Compensation Fund respectfully requests that this Honorable Court either not exercise its jurisdiction in this matter or rule that the instant statute is fully constitutional.

ARGUMENT

I. This Court Should Not Exercise Its Jurisdiction Because The Petitioners' Arguments Regarding The Disabled Americans Act Were Not Timely Raised In The Court Below And Are Thus Not Properly Before This Court

The Petitioners first argued that the Americans With Disabilities Act, 42 U.S.C.A. §§12101 et seq., creates a federal question in this case in their Application for Rehearing to the Louisiana Supreme Court which was denied. (See Appendix to Petition at p. A-43.) The High Court of Louisiana generally does not grant rehearings to consider issues raised for the first time in an Application for Rehearing. *Rodrigue v. LaGros,* 563 So.2d 248, 257 (La. 1990). The Louisiana Patient's Compensation Fund, a respondent herein, respectfully suggests that the general rule articulated by the *Rodrigue* Court is a procedural rule which formed the basis of the Court's denial of the Petitioners' Application for Rehearing, at least as to the issue of the significance of the Americans With Disabilities Act.

This Court has recognized that the failure to comply with a state procedural rule may constitute an independent and adequate state ground barring this Court's review of a federal question. *Hathorn v. Lovorn,* 457 U.S. 255, 262, 102 S.Ct. 2421, 2426, 72 L.Ed.2d 824 (1982), *citing, Michigan v. Tyler*, 436 U.S. 499, 512, n.7, 98 S.Ct. 1942, 1951 n.7, 56 L.Ed.2d 486 (1978). The Fund respectfully requests that this Honorable Court rule that the Petitioners' failure to comply with the afore-discussed state procedural rule constitutes a bar to this Court's review of a federal question that the Petitioners have attempted to raise through their invocation of the Americans With Disabilities Act.

Such a ruling by this Court would also be consistent with this Court's reluctance to exercise jurisdiction over questions not properly raised below. *See, Banker's Life and Casualty v. Crenshaw*, 486 U.S. 71, 79, 108 S.Ct. 1645, 1651, 100 L.Ed.2d 62 (1988). As this Court has stated, comity to the states and other considerations, chief among which is this Court's need for a properly developed record on appeal, all weigh heavily against this Court exercising its jurisdiction to consider a question not pressed or passed on below. 486 U.S. at 79, 108 S.Ct. at 1651.

Based on the foregoing, the Louisiana Patient's Compensation Fund respectfully requests that this Honorable Court not exercise its jurisdiction in this matter.

II. This Court Should Not Exercise Its Jurisdiction Because The Petition For Writ of Certiorari Does Not Raise A Substantial Federal Question.

A. A Federal Equal Protection Challenge To A State Statutory Limitation On Recovery In Medical Malpractice Actions Does Not Present A Substantial Federal Question.

This Honorable Court has previously dismissed an appeal of a case challenging, on federal due process and equal protection grounds, the constitutionality of a state statute limiting the recovery of non-economic damages in medical malpractice actions. *Fein v. Permanente Medical Group*, 474 U.S. 892, 106 S.Ct. 214, 88 L.Ed.2d 215 (1985). The reason given this Court for the dismissal was that "The appeal is dismissed for want of a substantial federal question." *Id.*

The statue challenged in the instant case similarly limits the recovery of damages in medical malpractice actions exclusive of medical expenses, legal interest and costs. The

Louisiana Patient's Compensation Fund suggests that, as in *Fein v. Permanente Medical Group, supra*, the instant constitutional challenge does not place before this Court a substantial federal question, and for that reason, the Petition should be denied.

The Petitioners have represented to this Court that "the passage of the [Americans With Disabilities] Act has created a substantial federal question on the constitutionality of caps on damages." (See Petition for Writ of Certiorari at p. 12.) The Fund respectfully submits that this federal law in no way created a substantial federal question, for the reasons outlined in Section B, *infra.*

B. The Americans With Disabilities Act Does Not Create a Substantial Federal Question In This Case

The Petitioners have argued that the United States Congress, through the Americans With Disabilities Act, 42 U.S.C.A. §§12101-12213, has legislated that disabled persons, including victims of medical malpractice, are suspect classes within the meaning of the Equal Protection Clause of the Fourteenth Amendment and that therefore a substantial question exists in this case. (See Petition for Writ of Certiorari at 10-13.) They base this argument on a "finding" by the Congress that "individuals with disabilities are a discrete and insular minority..." 42 U.S.C.A. §12101(a)(7).

The Louisiana Patient's Compensation Fund submits that first the Americans With Disabilities Act does not legislate that disabled persons constitute a suspect class for the purposes of Equal Protection analysis; and, second, while Section 5 of the Fourteenth Amendment confers upon the United States Congress broad powers to enforce that Amendment, it does not empower the Congress to exercise

the judicial function of determining the meaning of the Constitution.

Through the Americans With Disabilities Act the Congress sought:

> To invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

42 U.S.C.A. §12101(b)(4). In accordance with that purpose, the Congress prohibited discrimination against certain individuals with disabilities in what it considered to be the "major areas of discrimination" --- in employment, in the provision of public services, and in the provision of public accommodations and services operated by private entities. (See Subchapter I, Subchapter II, and Subchapter III of the Americans With Disabilities Act.) By eliminating these major areas of discrimination, the Congress hoped to further the nation's proper goals of assuring equality of opportunity, full participation, independent living, and economic self-sufficiency for disabled individuals. 42 U.S.C.A. §12101(a)(8).

The Fund submits that the Congress sought to enforce the Fourteenth Amendment by prohibiting discrimination in the areas addressed in Subchapters I through III of the Americans With Disabilities Act and that it made the finding relied upon by the Petitioners, that disabled persons are a discrete and insular minority, in order to provide support for its invocation of the Fourteenth Amendment as empowering it to end the discrimination directly addressed in the Act. In effect, the Congress found that there was no good reason for discrimination against qualified disabled persons in the three areas that it identified as being "major areas of

discrimination." Thus, the Act in no way constitutes a congressional mandate that the judiciary rule that all classifications of individuals with disabilities are suspect for the purposes of equal protection analysis.[1]

Furthermore while the Congress has the power in its own right, under §5 of the Fourteenth Amendment, to enact positive law to enforce the Fourteenth Amendment, it does not have the power to define the Equal Protection Clause for the Judiciary. U.S. Const. amend. XIV, §5 provides:

> Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

This Honorable Court has interpreted Section 5 to confer broad powers upon the Congress to enact legislation to enforce the prohibitions of the Equal Protection Clause. *Katzenbach v. Morgan,* 384 U.S. 641, 650, 86 S.Ct. 1717, 1723, 16 L.Ed.2d 828 (1966). In *Katzenbach*, this Court

[1] The petitioners have not argued that the Act addresses statutory limitations of liability as a "major area of discrimination" and therefore itself prohibits such a limitation in medical malpractice actions. Indeed, The Louisiana Supreme Court below found that the Louisiana Medical Malpractice Act ensures the recovery of all medical expenses of an injured victim of medical malpractice and the recovery of damages up to $500,000 plus interest and costs. *Butler v. Flint Goodrich Hospital,* 607 So.2d 517, 521 (La. 1992), at p. A-15 of the Appendix to the Petition for Writ of Certiorari. The guaranteed payment of these sums can only further the Congress' stated purpose of assuring full participation, independent living, and economic self-sufficiency for disabled individuals. And further, this guaranteed payment is indeed a benefit conferred upon the more severely injured victims of medical malpractice that victims of other types of tort do not enjoy.

ruled that Congress' power under Section 5 was not limited to prohibiting state legislative classifications that the Judiciary would itself rule were violative of Fourteenth Amendment Equal Protection. 384 U.S. at 648, 86 S.Ct. at 1722. Instead, legislation enacted by Congress to enforce the Fourteenth Amendment need only be "appropriate", with the reach of that broad congressional power to be formulated thusly:

> "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

384 U.S. at 650-651, 86 S.Ct. 1723, *quoting, McCulloch v. Maryland*, 4 Wheat. 316, 421, 4 L.Ed.2d 579 (1819). In short, this Court ruled that:

> Correctly viewed, §5 is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment.

484 U.S. at 651, 86 S.Ct. at 1723-1724. Thus, this Court ruled that §5 provided the Congress with much discretion in determining which legislation was appropriate to enforce the Fourteenth Amendment and that this Court would give appropriate deference to Congressional decisions as to which legislation was appropriate. This Court did not rule, however, that §5 empowered the Congress to assume the judicial function of defining the meaning of the Equal Protection Clause, including the designation of suspect classifications.

Because §5 of the Fourteenth Amendment does not confer upon Congress the power to mandate that the Judiciary rule that a state statute is violative of Fourteenth Amendment equal protection guarantees, the findings articulated by the Congress cannot bind this Court as it considers the constitutionality of the statute before it. If the Congress were to enact a law prohibiting a state statutory limitation of liability, then this Honorable Court would have the duty of determining whether the Congress had acted within its broad discretion under §5. The Americans With Disabilities Act does not contain such a prohibition, so that issue is not now before this Court.

Based on the foregoing, the Fund respectfully contends that the Americans With Disabilities Act can in no way affect this Honorable Court's scrutiny of La. R.S. §40:1299.42(B) vis-a-vis equal protection guarantees of the United States Constitution. Therefore, the Americans With Disabilities Act has not injected into this case a substantial question of federal law needed to be settled by this Court.

III. La. R.S. §40:1299.42(B) Does Not Violate The Equal Protection Guarantees Of The Fourteenth Amendment

The instant Petition for Writ of Certiorari presents the question of the constitutionality of La. R.S. §40:1299.42(B), which limits medical malpractice recovery from health care providers qualified under the Louisiana Medical Malpractice Act, La. R.S. §40:1299.41 et seq., to $500,000 plus medical care and related benefits, plus legal interest and costs. The Louisiana Patient's Compensation Fund respectfully contends that the instant limitation of liability is a responsible exercise of the Louisiana Legislature's power and is fully constitutional under the Equal Protection Clause of the United States Constitution.

There can be no doubt that individual human beings live together in cooperative societies because such societies have the great potential for providing those individuals with better lives. This, of course, is because individuals within cooperative human societies transmit beneficial knowledge gained through their own individual effort to other members of the society, thereby sparing the recipients from having to develop that knowledge independently. And the recipients of such knowledge are thus free to develop other knowledge through their own individual efforts which can then be transmitted throughout the society. This sharing of knowledge is cooperation. Because it allows the society to build upon its knowledge instead of requiring it to constantly rediscover it, the cooperative development of knowledge results in a tremendous growth in the amount of knowledge possessed by the society as a whole. This increased knowledge can be, and often is, applied to increase the individual's likelihood of leading a long and personally fulfilling life. The Fund submits that the People of Louisiana originally formed and now maintain the State of Louisiana in order to avail themselves of the benefits of human cooperation.[2] And, of course, one of the principal benefits of human cooperation is applied medical science.

A cooperative society is an interdependent society in that each member depends upon others to behave in a cooperative manner and to provide specialized knowledge in their various fields of expertise. This interdependence inevitably leads to interactions among the members of the society. Louisianians and other Americans alike place a premium, however, on their independence of thought and of action. Because of this independence, differences of opinion inevitably arise as to the course the society should take. The People of Louisiana, through the Constitution of Louisiana of

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[2] The existence of the State of Louisiana as one of the United States of America multiplies the benefits of cooperation available to the People of Louisiana.

1974, have chosen the democratically elected Legislature as the branch of government to direct the course of our society through the creation of rules binding upon each individual within our society. La. Const. Ann. arts. II, §2 and III, §1. This legislative power is plenary, except as limited by the Federal and State Constitutions. U.S. Const. amend. X; U.S. Const. art. VI, cl. 2; *Board of Secondary and Elementary Education v. Nix*, 347 So.2d 147, 153 (La. 1977).

Inherent in the concept of law binding upon members of a democratic society is the assent of the members of that society to be bound by legally enacted law. The petitioners in this matter now claim that they have not assented to the law here at issue. They argue that the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, which was ratified by the People of Louisiana on July 9, 1868, in fact prohibits this law.

The Fund respectfully submits that the rulings of this Honorable Court and of the lower federal courts are contrary to the Petitioners' position. Specifically, the federal jurisprudence is clear that a state statutory limitation of liability neither affects a fundamental constitutional right nor creates a suspect or quasi-suspect classification, so such a limitation need only have a rational basis to survive federal equal protection scrutiny. Further, the federal courts have ruled that limitations of the liability of health care providers that are for all practical purposes identical to the one here at issue have a rational basis and are thus fully constitutional vis-a-vis Fourteenth Amendment Equal Protection guarantees.

First, this Court has indicated that any right to recovery in tort is not a fundamental constitutional right requiring heightened scrutiny. This Court has stated that a state's interest in maintaining its own rules of tort law is paramount to any discernable federal interest, except perhaps an interest in protecting the individual from state action that is wholly arbitrary or irrational. *Martinez v. State of*

California, 444 U.S. 277, 282, 100 S.Ct. 553, 557, 62 L.Ed 2d 41 (1980). Based on that recognition, this Court ruled that a California statute immunizing public entities and employees from liability for injuries caused by paroled prisoners was constitutional as a reasonable exercise of the legislative power. 444 U.S. at 280, 283, 100 S.Ct. at 556, 558. Therefore, this Honorable Court has recognized that any constitutional right to recover in tort, if existent, is far from fundamental and must yield to the will of the People, as expressed through the Legislature, unless the Legislature acts in a wholly arbitrary or irrational manner.

The ruling of the *Martinez* Court is entirely consistent with this Honorable Court's recognition that it is not the provence of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 33, 93 S.Ct. 1278, 1297, 36 L.Ed.2d 16 (1973). Instead, it is the duty of this Court to assess the fundamentality of a right based on whether the right is explicitly or implicitly guaranteed by the United States Constitution. 411 U.S. at 33-34, 93 S.Ct. at 1297. Of course, this Honorable Court has never ruled that the United States Constitution explicitly or implicitly guarantees full recovery in tort.

Second, this Court has ruled that physically disabled persons do not constitute a suspect or quasi-suspect class. *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 442, 105 S.Ct. 3249, 3255, 87 L.Ed.2d 313 (1985). In distinguishing between a classification based on sex, which it had previously found quasi-suspect, and a non-quasi-suspect classification such as one based on physical disability, the *Cleburne* Court stated:

> "[W]hat differentiates sex from such non-suspect statuses as intelligence or physical disability... is that the sex characteristic frequently bears no relation to

> ability to perform or contribute to society." *Frontiero v. Richardson*, 411 U.S. 677, 686, 93 S.Ct. 1764, 1770, 36 L.Ed.2d 583 (1973) (Plurality Opinion).

473 U.S. at 440-441, 105 S.Ct. at 3254-3255. The *Cleburne* Court further stated:

> The lesson of *Murgia [Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976)] is that where individuals in the group affected by law have distinguishing characteristics relevant to interests the state has the authority to implement, the courts have been very reluctant, as they should be in our federal system and with our respect for the separation of powers, to closely scrutinize legislative choices as to whether, how, and to what extent those interest should be pursued. In such cases, the Equal Protection Clause requires only a rational means to serve a legitimate end.

473 U.S. at 441-442, 105 S.Ct. at 3255. There is little doubt that the instant statute has a rational basis.[3]

Furthermore, the Fund submits that a classification of persons injured as a result of medical malpractice is not a suspect or quasi-suspect classification for the purposes of equal protection analysis, even if the general classification of disabled individuals were suspect or quasi-suspect. The Equal Protection Clause of the Fourteenth Amendment provides heightened protection to discrete and insular minorities within our society against whom the majority possesses prejudice which tends to seriously curtail the

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[3] See the discussion of the Federal Court of Appeals cases, *infra*.

operation of those political processes ordinarily relied upon to protect minorities. *Plyler v. Doe*, 457 U.S. 202, 217, n.14, 102 S.Ct. 2382, 2394 n.14, 72 L.Ed.2d 786 (1982); *United States v. Carolene Products Company*, 304 U.S. 144, 152-153 n.4, 58 S.Ct. 778, 783-784, n.4, 82 L.Ed.2d 1234 (1938). Thus, heightened equal protection exist to protect minorities relegated to a position of powerlessness and for whom the normal political process cannot proceed properly. *Plyler*, 457 U.S. at 217, 102 S.Ct. at 2324.

The Fund respectfully suggests that the class of catastrophically injured victims of medical malpractice is not a politically powerless class in need of heightened equal protection. The Fund submits that the rights of persons catastrophically injured as a result of medical malpractice are vigilantly guarded by a very powerful segment of our society, the plaintiffs' bar, who have a strong interest in full recovery in tort. There can be no doubt that the plaintiffs' bar participates not only in the litigation of the constitutionality of limitations of liability, but also in the political process that gives rise to such limitations. Thus, the interests of future victims of medical malpractice are fully protected through the democratic process, and heightened scrutiny is not required. And, as this Court has stated:

> [...]in cases where [a statutory classification burdens neither a suspect group nor a fundamental interest], courts are quite reluctant overturn governmental action on the ground that it denies equal protection of the laws. The Constitution presumes that, absence some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted.

Vance v. Bradley, 440 U.S. 93, 96-97, 99 S.Ct. 939, 942-943, 59 L.Ed.2d 171 (1979). Therefore, the intervention of this Court is not now warranted.

In accordance with the rulings of this Honorable Court, the federal Courts of Appeals have upheld the constitutionality of state statutory limitations of recovery in medical malpractice actions vis-a-vis guarantees of equal protection provided by the Fourteenth Amendment. In *Hoffman v. United States*, 767 F.2d 1431, 1437 (9th Cir. 1985), the Court held that a California statute limiting the recovery of non-economic losses of medical malpractice victims to $250,000 did not violate federal guarantees of equal protection. The Court based its decision on its recognition that the limitation neither interfered with fundamental rights nor created a suspect or quasi-suspect classification, so the statute was subject only to rational basis scrutiny. *Id.* at 1435-1436. The Court stated:

> The legislative purpose of [the statutory limitation] is not difficult to discern. §3333.2 was written as part of a complex plan designed to reduce the dramatic rise in medical malpractice insurance premiums. Since these high rates were adversely affecting the quality of the medical services provided to the people of California, reduction of the rates was a legitimate state purpose.

Id. at 1437. The *Hoffman* Court found that basis to be rational and ruled the statute constitutional. *Id.* at 1437. In *Davis v. Omitowoju*, 883 F.2d 1155 (3rd Cir. 1989), the plaintiff challenged a Virgin Island statute capping medical malpractice verdicts at $250,000 for non-economic damages on various federal constitutional grounds, including the Fourteenth Amendment Equal Protection. The *Davis* Court ruled the statute constitutional vis-a-vis equal protection guarantees because the limitation on recovery had a rational

basis and did not violate a fundamental right or create a suspect class. The Court stated:

> Clearly, the Virgin Islands' decision to curb, through legislation, the high cost of medical malpractice insurance and thereby promote quality medical care to the residents of the Islands, provides a rational basis for capping the amount of damages that can be awarded to a plaintiff.

Id. at 1158. Other federal courts have ruled that similar limitations on recovery in medical malpractice actions have a rational basis and are thus constitutional under the Fourteenth Amendment. *See e.g., Lucas v. United States,* 807 F.2d 414, 422 (5th Cir. 1986).

Based on the foregoing, the Louisiana Patient's Compensation Fund respectfully submits that La. R.S. §40:1299.42(B) has a rational basis and is thus fully constitutional under the Fourteenth Amendment of the United States Constitution.

It follows then that the Petitioners have in no way withheld their assent to the statute here at issue. Through their ratification of the Louisiana Constitution of 1974, they and the rest of the People of Louisiana have placed the issue of recovery in tort in the hands of the Louisiana Legislature, as long as the legislative decision is not arbitrary.

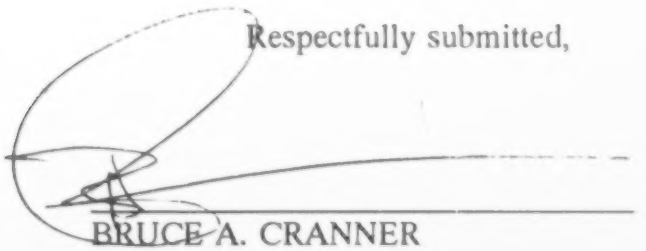
There can be no doubt that applied medical science is a benefit of cooperation through which individuals secure their lives and their pursuit of happiness. The People of Louisiana, through normal political process, have reasonably determined that an individual's full recovery in tort must yield to the public need of continued availability of health care. The Fund respectfully submits that any private mischief occasion by the instant statute is fully warranted by the benefits of society which man has enjoyed and still must

have as he continues his ascent from the cave to the stable to the stars.

CONCLUSION

For the reasons stated above, the Louisiana Patient's Compensation Fund, Respondent, respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari. Should a Writ of Certiorari be granted, the Respondent asks that the statute be declared fully constitutional vis-a-vis the Equal Protection Clause of the United States Constitution.

Respectfully submitted,



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